IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DAVID W. STRING,	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION
	:	NO. 99-6218
CHANDLER HALL HEALTH	:	
SERVICES, INC.,	:	
Defendant.	:	

M E M O R A N D U M

BUCKWALTER, J. March 20, 2000

Presently before the Court is Defendant Chandler Hall Health Services, Incorporated's ("Defendant") Motion to Dismiss Plaintiff David W. String's ("Plaintiff") Complaint in Part and To Strike Plaintiff's Claim for Punitive Damages. For the reasons stated below, Defendant's Motion will be granted.

I. BACKGROUND

Plaintiff is a male nurse who worked for Defendant from April, 1992 until February, 1998 when Defendant terminated his employment. Defendant originally hired Plaintiff to work as a residential care assistant. With the financial aid and scheduling assistance of Defendant, Plaintiff became a licensed practical nurse (LPN) in March, 1994. Thereafter, Plaintiff worked for Defendant as an LPN until his employment was terminated.

Plaintiff alleges that Defendant's "supervisory and management staff notified Plaintiff that although there were no problems with his nursing skills or his patient care, he was

being terminated from his employment effective immediately because the supervisory staff was of the opinion that Plaintiff was not 'happy' in his employment." Plaintiff asserts that he was replaced by female nurses possessing the same qualifications and similar, or less, work experience.

Plaintiff initiated the within action against Defendant, his former employee. The Complaint alleges hostile work environment and unlawful discharge in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§2000e, et seq., and the Pennsylvania Human Relations Act, 43 P.S. §951, et seq. Plaintiff also alleges Defendant's breach of the implied covenant of good faith and fair dealing in its employment of Plaintiff, and a conspiracy to breach the implied covenant of good faith and fair dealing. Finally, Plaintiff demands punitive damages in addition to the damages available under the aforementioned causes of action.

Defendant has filed a Motion to Dismiss Plaintiff's Complaint in Part and To Strike Plaintiff's Claim for Punitive Damages pursuant to Federal Rule of Civil Procedure 12(b)(6). Defendant contends that Plaintiff has failed to state a claim upon which relief can be granted, and additionally moves to strike Plaintiff's request for punitive damages.[1]

II. STANDARD

"A motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) may be granted only if, accepting all well-pleaded allegations in the complaint as true, and viewing them in the light most favorable to plaintiff, plaintiff is not entitled to relief." In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1420 (3d Cir. 1997). That is, a reviewing court must "'refrain from

1. Plaintiff has since withdrawn his claim for punitive damages under the Pennsylvania Human Relations Act, as such damages are not available under said Act.

granting a dismissal unless it is certain that no relief can be granted under any set of facts which could be proved.'" Schuylkill Energy Resources, Inc. v. Pennsylvania Power & Light Co., 113 F.3d 405, 412 n.5 (3d Cir.) (quoting Fuentes v. South Hills Cardiology, 946 F.2d 196, 201 (3d Cir. 1991)), cert. denied, 118 S. Ct. 435 (1997). "The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims." Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

III. DISCUSSION

Defendant asserts that Plaintiff's Complaint completely fails to state claims for hostile work environment (Counts One and Two), breach of the covenant of good faith and fair dealing (Count Three), conspiracy to breach the covenant of good faith and fair dealing (Count Four), and/or punitive damages (Count Five). Therefore, Defendant requests that each Count be dismissed.

A. Hostile Work Environment

In order to state a claim for a hostile work environment, a plaintiff must show that: (1) he is a member of the protected class; (2) he was subjected to harassment, either through words or actions, based on his membership in that class; and (3) the harassment had the effect of unreasonably interfering with his work performance and creating an objectively intimidating, hostile, or offensive work environment. See Andrews v. City of Philadelphia, 895 F.2d 1469, 1482 (3d Cir.1990). "The hostility of the work environment must be determined by considering factors such as the frequency, severity, or threatening nature of the purportedly harassing conduct." Id. (citing Presta v. SEPTA, No. CIV.A. 97-2338, 1998 WL 313075, at *13 (E.D. Pa.

June 11, 1998)). Mere "offhand comments and isolated incidents" are not sufficient to set forth a claim for hostile work environment, for in order to state such a claim, the conduct alleged "must be extreme to amount to a change in the terms and conditions of employment." Faragher v. City of Boca Raton, 118 S.Ct. 2275, 2283-84 (1998).

Defendant contends that, not only does the Complaint make no allegations of a hostile work environment, but it lacks "a single allegation that Plaintiff suffered harassment because of his gender." Defendant further contends that Plaintiff also fails to allege that any such harassment became so severe and/or pervasive as to create an abusive working environment.

Plaintiff asserts that when the Complaint is read in the light most favorable to him, a reasonable inference can be drawn that his employment was terminated for no reason other than the fact of his gender. In support of this argument, Plaintiff cites to the following paragraphs contained within the Complaint:

> 11. Throughout the course of his employment, Plaintiff was consistently evaluated as a good employee and received positive feedback from Defendant.
>
> 13. Defendant was so impressed with Plaintiff that it accommodated Plaintiff's work schedule and assisted him financially so as to enable him to enroll in a nursing program from which he graduated with a diploma as a licensed practical nurse in March 1994.
>
> 15. Plaintiff was one of only a few male nurses and male residential care assistants performing direct patient care in Defendant's nursing home throughout his nearly six years of employment by Defendant.
>
> 16. On or about April 1997, Defendant hired new female supervisory staff to supervise the nursing staff, including Plaintiff, at Defendant's nursing home.

> 19. On or about February 3, 1998, Defendant's supervisory and managerial staff notified Plaintiff that although there were no problems with his nursing skills or his patient care, he was being terminated from his employment effective immediately because the supervisory staff was of the opinion that Plaintiff was not "happy" in his employment.
>
> 20. Defendant replaced Plaintiff with female nurses who possessed the same qualifications and similar or less work experience than Plaintiff had.
>
> 21. Between June 1997 and February 1998, male nurses and residential care assistants were either terminated or otherwise removed by Defendant from direct patient care in the nursing home.
>
> 22. Between June 1997 and February 1998, all of the male nurses and residential care assistants who were either terminated or otherwise removed from direct patient care in the nursing home were replaced by female nurses and female residential care assistants who possessed the same qualifications and similar or less work experience that Plaintiff had.

Complaint at ¶¶ 11, 13, 15, 16, 19-22.

In response to this, Defendants contend that Plaintiff has not made any hostile work environment claim and argues that Plaintiff has essentially conceded this on record. As noted, Plaintiff explicitly states that his claim is not a sexual harassment claim and that he does not allege that he was subjected to sexual harassment per se in the workplace. Plaintiff contends that the case sub judice is about the "pervasive hostile atmosphere that male nurses in general, and Plaintiff in particular, experienced as employees of Defendant . . . especially after the April 1997 hiring of new supervisory staff."

Courts recognize two forms of sexual harassment: quid pro quo sexual harassment and hostile work environment sexual harassment. Scott v. CWA Walker, Inc., 1992 WL 346845, *1 (E.D.Pa. Nov. 10, 1992); Steele v. Offshore Shipbuilding, Inc., 867 F.2d 1311, 1315 (11th

Cir.1989). Not only has Plaintiff failed to plead that any harassment he suffered was severe, he has also failed to allege that Defendant or any of its supervisors harassed him. In fact, Plaintiff stated in his Brief that "[t]his is not a sexual harassment case." Therefore, in light of the fact that Plaintiff has failed to allege facts that would lead to an inference that he was subjected to harassment while employed by Defendant, and because a hostile work environment claim is a sub-category of sexual harassment (a cause of action that is admittedly not the subject of this lawsuit), Counts One and Two shall be dismissed as they pertain to a hostile work environment.[2]

B. Breach of the Covenant of Good Faith and Fair Dealing and Conspiracy to Breach that Covenant

Plaintiff does not allege that there was an employment contract between himself and Defendant, but would like to proceed on a claim for breach of the covenant of good faith and fair dealing. As this Court recently explained, "[w]hile there may be an express or implied covenant of good faith and fair dealing in an employment contract, a breach of such covenant is a breach of contract action, not an independent action for a breach of a duty of good faith and fair dealing." Seiple v. Community Hosp. of Lancaster, No. Civ. A. 97-8107, 1998 WL 175593, at *2 (E.D. Pa. Apr. 14, 1998) (Buckwalter, J.).

Accordingly, as "Pennsylvania does not recognize a claim for breach of [the] covenant of good faith and fair dealing as an independent cause of action," id., Counts Three and Four must be dismissed.

2. Plaintiff's claim of Unlawful Discharge remains active.

C. Punitive Damages

As Count One, part of Count Two, Count Three and Count Four have been dismissed, Plaintiff's claim for punitive damages fails and Count Five is also dismissed. The only count that survives this Motion is Count Two of Plaintiff's Complaint. That particular Count comes under the guise of the Pennsylvania Human Relations Act and Plaintiff concedes that punitive damages are not available under that Act.

IV. CONCLUSION

For the reasons stated above, Defendant's Motion to Dismiss is Granted. Plaintiff's Unlawful Discharge is unaffected, as that claim was not subject to this Motion.

An appropriate Order follows.

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CHANDLER HALL HEALTH	:	
SERVICES, INC.,	:	
Defendant.	:	

O R D E R

AND NOW, this 20th day of March, 2000, upon consideration of Defendant Chandler Hall Health Services, Incorporated's Motion to Dismiss, and Plaintiff David W. String's Response thereto, it is hereby ORDERED and DECREED that said Motion is GRANTED.

BY THE COURT:

RONALD L. BUCKWALTER, J.